# COLUMBIA LAW REVIEW.

Published monthly during the Academic Year by Columbia Law Students.

SUBSCRIPTION PRICE, $2.00 PER ANNUM. 30 CENTS PER NUMBER.



# NOTES.

DAMAGES FOR DELAY IN CARRIAGE BY SEA.—In *The Parana* (1877), 2 P. D., 118, the English Court of Appeal held, where goods shipped from the Philippines to London were delayed unreasonably on the voyage by the fault of the carrier, that the measure of damages was only the interest on the invoice value of the goods during the period of unreasonable delay. When the goods arrived, the market price had considerably fallen, and the shippers maintained they should be compensated for the loss of market; but their claim was denied. The Court declared that to make the difference in market value the true measure of damages, it must be proved both that goods would not be sold before arrival, and that they would be sold immediately upon arrival; whereas in sea carriage nothing is more common than to sell the goods while still at sea by transfer of the bill of lading, and there is no presumption that they are sent to be sold in market immediately upon arrival, because the time a ship will arrive is known to be uncertain. This case has been cited to represent the English law. Carver, Carr. by Sea (3rd ed.) § 726; Mayne on Damages (1st Am. ed.) § 382; Sedgwick on Damages (8th ed.) § 855. Very recently, however, the Court of Appeal has made a decision which will, to say the least, narrow its authority. Supplies destined for sale to the British army were shipped from New York to Algoa Bay. The captain knew the purpose, and knew that the market was likely to be soon forced down by similar importations. The ship was delayed unreasonably by the carrier's fault. The Court held that the shipper was entitled to recover the difference between the market value of the goods at the time they should have arrived and that when they did arrive. *The Parana* was distinguished apparently on two grounds, first, that as sea transit improves the duration of voyages can be closely

calculated, and second, that as the purpose of the shipment was known to the carrier the loss was one within the contemplation of the parties (*Dunn* v. *Bucknall Bros.* [1902] 2 K. B. 614.)

While the fact of knowledge makes the case quite different from *The Parana*, it is to be hoped that the older case has been permanently set aside. The principle on which it proceeds, as suggested in Sedgwick on Damages (8th ed. § 855), is altogether wrong. The fundamental rule is that one who breaks his contract is liable for such damage as may fairly and reasonably be considered, either as arising in the usual course of things from the breach, or, if not so arising, then as within the contemplation of the parties when they made the contract. *Hadley* v. *Baxendale* (1854), 9 Ex. 341; *Griffin* v. *Colver* (1858) 16 N. Y. 489. Now when a carrier delays in delivery, he may commit two wrongs; he keeps the goods from their owner, and he may, perhaps injure them. For example, if perishable goods are delayed, their quality suffers. When goods are injured by a carrier, there is no question that the measure of damages is the difference between their value as they were delivered and that as they should have been delivered. *Henderson* v. *Maid of Orleans* (1857) 12 La. Ann. 352; *Heil* v. *St. Louis, etc., R. Co.* (1885) 16 Mo. App. 363; *The Surrey* (1887) 30 Fed. 223. But when goods of a kind usually sold in market are kept from the market, an actual injury is done them. A diminution in their market value as said by GRAY, J., in *Cutting* v. *Grand Trunk R. Co.* (Mass. 1866) 13 All. 381, is "a real and actual loss of a portion of the real and intrinsic value, as much as a change for the worse in the quality of the goods." The goods are of less value because of their not reaching the market in time; the injury is not the consequence of the carrier's wrong, but the very wrong itself. And so it has been decided in numberless cases of carriage by land, that the measure of damages for delay is the difference between the market value at the time the goods arrive and that when they should have arrived, together with interest, less freight due. If there is no fall in the market, interest during the period of delay on the value at the time the goods should have arrived, is proper compensation for the injury of detention. *Smith* v. *Whitman* (1850) 13 Mo. 352. And the American courts have made no distinction in carriage by sea. *The Success* (1870) 1 Blatch. 551; *The Prussia* (1900) 100 Fed. 484. In *The Parana* the Court treated the loss of market as a loss of profits, for which, had their premise been sound, they would have been right in denying recovery as a consequential loss not within the contemplation of the parties. But the same argument was advanced and overthrown in *Cutting* v. *Grand Trunk R. Co., supra,* and in *Wilson* v. *L. & Y. R. Co.* (1861) 9 C. B. (N. S.) 632. "I believe we are all of opinion that the plaintiff is not entitled to anything for loss of profits," said BYLES, J., in the latter case; "but it must not be assumed that loss of profits and diminution of value mean the same thing."

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HOW FAR MORTGAGOR WHO HAS TRANSFERRED HIS EQUITY OF REDEMPTION IS A MERE SURETY.—When a mortgagor conveys the mortgaged property, his grantee is evidently brought into connection in some way with the mortgage transaction. How far this threefold